



## Swaziland

### Country Reports on Human Rights Practices - [2001](#)

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Swaziland is governed as a modified traditional monarchy with executive, legislative, and limited judicial powers ultimately vested in the King (Mswati III). The King rules according to unwritten law and custom, in conjunction with a partially elected parliament and an accompanying structure of published laws and implementing agencies. Although the Government continued formally to profess an intention to reform the current system, it took no action to do so. In August the Constitutional Review Commission (CRC) issued its report with recommendations for a new constitution that concluded that most citizens want a continuation and strengthening of the current system. The September municipal elections and 1998 parliamentary and municipal elections increased representative government; however, political power continues to rest largely with the King and his circle of traditional advisors, including the Queen Mother. King Sobhuza, the King's father who died in 1982, suspended the 1968 Constitution in 1973 with a decree that bans political parties, meetings, and processions; these meetings can be held only in local "Tinkhundla" administrative centers or as authorized by the police. There are public demands to lift the 1973 decree. Based upon the 1973 decree, the King has the authority to issue decrees that carry the force of law and exercised this authority most recently in June when he issued Decree No. 2. Decree No. 2 reasserted and strengthened his absolute authority, provided further restrictions on freedom of speech and the press, reinstated a nonbailable offense provision, and provided a mechanism to neutralize the powers of the judiciary and Parliament. On July 24, the King repealed the decree after the Government received strong condemnation from foreign governments and domestic and international groups; however, the King retained the nonbailable offense provision. The judiciary is generally independent; however, the King has certain judicial powers. The judiciary's independence was challenged occasionally by individuals in high positions, who have made attempts to influence or overturn some court decisions. The Chief Justice of the High Court (a South African citizen appointed by the King) has resisted pressure to yield any powers to those outside the judiciary.

Both the Umbutfo Swaziland Defense Force (USDF) and the Royal Swaziland Police (RSP) operate under civilian control and are responsible for external and internal security. Some communities, questioning the ability of National Police to operate effectively at the community level, have formed community police. Members of both the National Police and the community police committed some human rights abuses.

The country has a free market economy, with relatively little government intervention; its population is approximately 1.1 million. The majority of citizens were engaged in subsistence agriculture and the informal marketing of agriculture goods, although a relatively diversified industrial sector accounted for the largest component of the formal economy. The economy relied heavily on the export sector, especially on the wood pulp, soft drink concentrate, and sugar industries, which were composed primarily of large firms with mostly foreign ownership. The country depends heavily on South Africa, from which it receives almost all of its imports and to which it sends the majority of its exports. A quasi-parastatal organization established by royal charter, and responsible to the King, maintained large investments in major sectors of the economy, including industry, agriculture, and services. This parastatal requires partnership with foreign investors and international development agencies.

The Government's human rights record was generally poor, and there continued to be serious human rights problems. Citizens are not able to change their government peacefully. Police used excessive force on some occasions, and there were reports of deaths in custody and that police continued to torture and beat some suspects. The Government generally failed to prosecute or otherwise discipline officers who committed abuses. Prison conditions generally met international standards; however, government remand centers remained overcrowded. The Government interfered with the judiciary, which included the King's overturning of the decision of the Court of Appeals regarding the nonbailable offense provision. The Government infringed on citizen's privacy rights. The Government continued to limit freedom of speech and of the press, restraints

continued on news coverage by government-owned broadcast houses, and all media practiced some self-censorship, although journalists spoke out on key issues. The Government restricted freedom of assembly and association and prohibited political activity, although numerous political groupings operated openly and voiced opinions critical of the Government, which received prominent press coverage. The police on occasion harassed political activists. There were some limits on freedom of movement. Legal and cultural discrimination and violence against women, as well as abuse of children, remained problems. Some societal discrimination against mixed race and white citizens persisted. The Government's record on worker rights improved during the year with the creation of the Conciliation, Mediation, and Arbitration Commission and several Industrial Court rulings favoring workers in their claims against unfair dismissal.

## RESPECT FOR HUMAN RIGHTS

### Section 1 Respect for the Integrity of the Person, Including Freedom From:

#### a. Arbitrary or Unlawful Deprivation of Life

There were no reports of the arbitrary or unlawful deprivation of life by the Government or its agents.

There were reports of deaths in police custody. For example, in February in the village of Sithobelwini, police shot and killed a 20-year-old man who they claimed was trying to escape from police custody. An official coroner's inquiry noted several discrepancies between the police's claim and the injuries sustained by the deceased. According to the coroner, the injuries that were sustained seemed to indicate that police may have deliberately killed the man. On March 20, two 20-year-olds died in police custody after they were arrested on the grounds that they were stealing and reselling merchandise. The youths died after ingesting poison but there is no conclusive evidence whether the youths committed suicide or were forced to ingest the poison by police.

#### b. Disappearance

There were no reports of politically motivated disappearances.

#### c. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment

The law does not prohibit specifically such practices, although under the 1963 Prison's Act correctional facility officers may be prosecuted if they engage in such practices; however, there were reports that government officials employed them. There were credible reports by criminal defendants that the security forces used torture during interrogation and abused their authority by assaulting citizens and using excessive force in carrying out their duties. Police sometimes beat criminal suspects and occasionally used the "tube" style of interrogation, in which police suffocate suspects through the use of a rubber tube around the face and mouth. According to unofficial reports, police also still used the Kentucky method of interrogation in which the arms and legs of suspects are bent and tied together with rope or chain, then the person is beaten. The Government generally failed to prosecute or otherwise discipline police officers for such abuses. An internal complaints and discipline unit investigates reports of human rights abuses by the police, but no independent body has the authority to investigate police abuses. The Government prohibited the public release of findings from a Commissioner of Police investigation into allegations of police brutality during a November 2000 demonstration (see Section 2.b.). Courts have invalidated confessions induced through physical abuse and have ruled in favor of citizens assaulted by police.

There were reports of deaths in police custody. In February and March, three youths died while in police custody (see Section 1.a.).

On October 11, police used tear gas to disperse forcibly 150 persons that had gathered to protest the imposed chieftainship of Prince Maguga in the KaMkwheli and Macetjani areas. There were allegations that police subsequently beat several persons; nine of the protestors reportedly suffered minor injuries (see Sections 1.f. and 2.b.).

On October 19, police forcibly disrupted a press conference held by the Secretary General of the Swaziland Democratic Alliance (SDA) (see Section 2.b.); police pushed and shoved members of the SDA and the press. In October 2000, police forcibly dispersed a demonstration by students protesting the evictions of two chiefs and their supporters from their residences; 18 students reportedly were injured (see Sections 1.f., 2.a., 2.b., and 3).

Unlike in the previous year, there were no reports that police used force to disperse worshippers at community prayer services.

Prison conditions generally met international standards; however, government remand centers remained overcrowded, and prison conditions were generally poor. Such conditions improved following the 2000 opening of new institutions including a modern correctional facility for women. The use of nonbailable provisions resulted in the continued overcrowding and other unfavorable conditions in government remand centers where suspects were held during pretrial detention and often were released for time served after being sentenced (see Sections 1.d. and 1.e.).

Women and juveniles are held in separate prison facilities.

The Government routinely permitted prison visits by diplomats, journalists, human rights monitors, and representatives of international organizations. During the year, a foreign diplomat and the Assistant Secretary General for the U.N. International War Crimes Tribunal for Rwanda conducted visits to prison facilities (see Section 4).

#### d. Arbitrary Arrest, Detention, or Exile

The law prohibits arbitrary arrest and detention, and the Government generally observes these prohibitions. The law requires warrants for arrests, except when police observe a crime being committed or have reason to believe that a suspect may flee. Detainees may consult with a lawyer of their choice and must be charged with the violation of a statute within a reasonable time, usually 48 hours, or, in remote areas, as soon as the judicial officer appears.

In January police arrested 15 labor union and political group members for organizing protest actions and for political association. On September 24, the Magistrate court acquitted six of these union members, but the cases of the remaining nine union representatives were pending at year's end (see Sections 2.b., 2.d., and 6.a.).

In November 2000, Mario Masuku, the president of the banned political party People's United Democratic Movement (PUDEMO), was arrested on charges of sedition; he was released on bail after 5 days in detention. Bail conditions included reporting to police headquarters on a weekly basis, asking permission from the High Court for international travel, and being unable to address political rallies. On October 1, Masuku disobeyed his bail conditions and subsequently was arrested by police on October 4. His trial date, which originally was set for October 29, did not occur, and his trial was postponed indefinitely.

At year's end, the Industrial Court was adjudicating the 1999 case of an editor of an independent newspaper who was arrested for criminal defamation (see Section 2.a.).

The Government continued to limit the provisions for bail for crimes appearing in the Non-Bailable Offenses Order, which became effective in 1993 and was strengthened by Parliament in 1994. The Order currently lists 11 offenses. The mere charge of the underlying offense, without any evidentiary showing that the suspect is involved, is sufficient to employ the nonbailable provision. The Minister of Justice may amend the list by his own executive act. In May the Court of Appeals ruled that the nonbailable order was unconstitutional; however, on June 22, the King issued Decree No. 2, which overruled the Court's decision. The King's Decree No. 3, issued on July 24, reinforced Decree No. 2's ruling on the provision. The nonbailable offense provision exacerbates ongoing judicial problems such as lengthy pretrial detention, the backlog of pending cases, and prison overcrowding.

The Government does not use forced exile.

#### e. Denial of Fair Public Trial

The law provides for an independent judiciary; however, the King has certain judicial powers. In addition individuals in high positions, including the King, the Minister of Justice and Constitutional Affairs, and the traditional governor of the royal family occasionally challenged the judiciary's independence by attempting to influence or overturn some court decisions (see Section 1.d.). The Chief Justice of the High Court (a South African citizen appointed by the King) has resisted pressure to yield any powers to those outside the judiciary. However, the Government ignored a September 2000 ruling by the Chief Justice that prohibited the eviction of two Swazi chiefs (see Sections 1.c., 1.f., 2.a., 2.b., and 3). In October 2000, the Chief Justice rescinded the injunction against the eviction after the Attorney General gave him an affidavit stating that the King had decreed the evictions and that the High Court had no jurisdiction over the case (see Section 3). The case was

appealed to the Court of Appeals, which ruled in December 2000 that the Chief Justice's original ruling was correct. Although the Government initially indicated that it might not renew the Chief Justice's contract and force him to retire, he reportedly will remain until the new constitution, which is expected to delineate the terms and conditions for his office, is drafted and adopted. During the year, the King succeeded in overruling a subsequent decision made by the Court of Appeals ordering the Government to compensate citizens who also were expelled forcibly from their homes when the chiefs were evicted in October 2000 (see Section 1.f.).

Judicial powers are vested in a dual system, one independent and based on Western law, the other based on a system of national courts that follows unwritten traditional law and custom. In treason and sedition cases, the King can circumvent the regular judiciary by appointing a special tribunal, which may adopt rules and procedures different from those applied in the High Court; however, this power has not been used since 1987.

The Western judiciary consists of the Court of Appeals (composed entirely of expatriate, usually South African, judges), the High Court, and magistrate courts, all of which are independent of executive and military control and free from intimidation from outside forces. The expatriate judges, frequently distinguished members of their respective bars, serve on the basis of 2-year renewable contracts. Local judges serve indefinitely with good behavior. In magistrate courts, defendants are entitled to counsel at their own expense. Court-appointed counsel is provided in capital cases or when difficult points of law are at issue. There are well-defined appeal procedures up to the Court of Appeals, the highest judicial body. A lack of an independent court budget, lack of trained manpower, inadequate levels of salary remuneration, and managing casework remain problems for the judiciary.

Most citizens who encounter the legal system do so through the traditional courts. The authorities may bring ethnic Swazis to these courts for minor offenses and violations of traditional law and custom. In traditional courts, defendants are not permitted formal legal counsel but may speak on their own behalf and are assisted by informal advisers. Sentences are subject to review by traditional authorities and can be appealed to the High Court and the Court of Appeals. The public prosecutor legally has the authority to determine which court should hear a case, but in practice the police usually make the determination. Accused persons have the right to transfer their cases from the traditional courts. Delays in trials are common.

In 1998 the King issued an administrative order that strengthened the judicial powers of traditional chiefs appointed by the King. The order provides for chiefs' courts with limited civil and criminal jurisdiction and authorizes the imposition of fines up to approximately \$30 (300 emalangeni), and prison sentences of up to 3 months. Accused persons are required to appear in person without representation by a legal practitioner or advocate. However, chiefs' courts only are empowered to administer customary law "insofar as it is not repugnant to natural justice or morality," or inconsistent with the provisions of any law in force. The order provides that defendants may appeal decisions of the chief's court to regional appeal courts and to the higher courts of appeal. Appeals in criminal matters can be taken to the Judicial Commissioner as a last resort, and the High Court is the court of last resort for civil matters. Human rights organizations and the press expressed serious concern over issuance of the 1998 Administrative Order.

There were no reports of political prisoners.

#### f. Arbitrary Interference with Privacy, Family, Home, or Correspondence

The law requires a warrant from a magistrate before police may search homes or other premises, and police generally respect this requirement in practice; however, police officers with the rank of subinspector or higher have the right to conduct a search without a warrant if they believe that evidence might be lost through the delay in obtaining a warrant. Searches without warrants occur occasionally.

There were occurrences of physical surveillance by the police on members of labor unions and banned political groups. Police also used video cameras to record meetings of union members (see Section 2.b.).

On February 16, 15 armed police officers raided the home of a Swazi man and his foreign wife. Police reportedly were abusive and used a video camera as they searched the premises for 3 hours. The police had a search warrant; however, the warrant did not include specific reasons for the search.

In October 2000, the Operation Support Service Unit (OSSU) of the RSP and the USDF evicted and relocated from their residences two Swazi chiefs representing the areas of KaMkhweli and Maceetjini, members of their families, and others who opposed the appointment of Prince Maguga Dlamini to replace the chiefs (see Sections 1.c., 2.a., 2.b., and 3). Several journalists were harassed and detained while covering the evictions (see Sections 1.c., 2.a., 2.b., and 3). Reportedly 200 villagers who were supporters of the chiefs were scattered throughout the country; some were moved to an open field where they sought temporary shelter

unsuccessfully. Some families were allowed to return to their residences after apologizing to the Prince and recognizing him as their chief. In late October 2000, students from two colleges and members of two unions marched to protest the evictions; several students were injured when police dispersed their march (see Sections 1.c. and 2.b.). In September 2000, the Chief Justice rescinded a ruling against the eviction order after the Attorney General presented an affidavit stating that the King had decreed the evictions. The case was appealed to the Court of Appeals, which ruled in December 2000 that the Chief Justice's original ruling was correct. On June 13, the Court of Appeals ordered the Government to assist and compensate the evicted residents, to allow them to return to their homes, and allow them to remain in their homes until final judgement was decided by the High Court; however, on June 22, King's Decree No. 2 overturned the Court of Appeals' ruling. On July 2, police again evicted the chiefs and approximately 23 persons who had returned to their residences.

In September authorities initially refused to bury the deceased relative of one of the deposed chiefs; however, the body was buried 3 weeks later on his ancestral grounds. In November and December, authorities again refused the burial of another relative. The High Court issued a ruling that ordered the body to be buried without interference, and on December 5, police allowed the burial.

Unlike in the previous year, there were no reports that police entered the private homes of prodemocracy activists or banned political party members.

## Section 2 Respect for Civil Liberties, Including:

### a. Freedom of Speech and Press

The law does not provide for freedom of speech and of the press, and the Government limits these rights through a continuing formal ban on political parties and occasional harassment of journalists. The Government also discouraged critical news coverage of the royal family, and journalists practice self-censorship in regard to the immediate royal family and national security policy. The Government prohibited media coverage of the CRC (see Section 3).

During the year, the Government did not make any progress in drafting a media policy to replace the proposed media council bill.

There is one daily independent newspaper, and a daily government-financed newspaper. In general both the government-owned and independent newspapers covered a wide variety of sensitive topics and criticized government corruption, inefficiency, and waste, frequently using harsh invective. However, the Government uses the same media to rebut such allegations. With some exceptions, the Government continued to withhold its advertising from the independently owned daily newspaper. The Prime Minister's office distributes a free weekly circular reporting on government policy and activities.

On January 29, the government-owned newspaper, Swazi Observer, reopened; in February 2000, the authorities had closed the newspaper, probably in response to the newspaper's refusal to reveal the sources of several stories.

On May 4, the Government issued a legal notice proscribing a monthly magazine and a weekly newspaper on the basis of the Proscribed Publications Act of 1968. On May 22, the High Court declared the legal notice invalid because it did not specifically justify its issuance. Later that day, the Government again proscribed the two publications on the grounds that they were detrimental to the public order and that they did not comply with registration requirements that were amended on May 3. The proscription of the monthly publication was lifted in an out-of-court settlement in August. On August 31, the High Court ruled against the Government's proscription of the weekly newspaper; the Government appeal of the ruling was pending at year's end.

On June 22, the Government implemented Decree No. 2, which contained a provision allowing the Minister for Information and Public Service to proscribe any magazine, book, newspaper, or excerpt without furnishing any reasons or jurisdictional facts. It also ordered that no legal proceedings may be instituted against such a proscription. On July 24, the Government issued Decree No. 3, which repealed these provisions.

During the October 2000 eviction of two Swazi chiefs from their residences, some journalists were harassed (see Sections 1.f. and 3). The police also arrested and detained for 4 hours a Swazi television journalist, confiscated his tape recording, and accused him of operating as an informant for a foreign government.

In 1999 an editor of an independent newspaper was arrested for criminal defamation after reporting that the King's latest fiancée, now one of his wives, was a high school dropout. After being released on bail, the editor

was fired from his job. The editor's case was being adjudicated at year's end (see Section 1.d.). In response to the scandal, the Ministry of Public Service drafted antidefamation statutes in 1999, which were never approved by the Attorney General and Parliament, and they are unlikely to be implemented.

The Government has a monopoly over television and radio programming. There are two government-owned radio stations. There is one independent radio station, which only broadcasts religious programs. The government-owned television and radio stations--the most influential media in reaching the public--generally followed official policy positions. Government broadcast facilities retransmit Voice of America (VOA) and British Broadcasting Corporation (BBC) news programs in their entirety.

Private companies and church groups own several newsletters, magazines, and one radio station that broadcasts throughout the region, but these generally avoid political controversy. The Christian Broadcasting Company radio station is allowed to operate despite the fact that it is government policy not to permit private broadcasters to operate.

The practice of self-censorship and the prohibition of political gatherings limit academic freedom. There are concerns expressed by diplomatic, media, and human rights sources about one recommendation in the CRC report, which calls for stiffer penalties for those who speak against the state (see Section 3).

The Government does not restrict use of the Internet.

#### b. Freedom of Peaceful Assembly and Association

The law does not provide for freedom of assembly, and the Government restricts this right in practice. King Sobhuza's 1973 decree prohibits meetings of a political nature, processions, or demonstrations in any public place without the consent of the Commissioner of Police. The authorities routinely withheld permission to hold such meetings.

Police continued to harass, arrest, and disrupt the meetings of prodemocracy activists and members of banned political parties. For example, members of the banned political group Ngwane National Liberatory Congress (NNLC) submitted a formal application to hold a meeting at a Tinkhundla center on August 4 reportedly to discuss membership renewal and possible action plans to educate youth about HIV/AIDS. Police turned down the application, and the meeting was not held.

On the morning of October 11, special police forces used tear gas to disperse more than 150 persons who gathered in protest over the issue of the imposed chief in Macetjeni and KaMkwheli (see Sections 1.c. and 1.f.).

On October 19, police forcibly disrupted a press conference held by the Secretary General of the SDA in the town of Manzini (see Section 1.c.).

Police also banned and dispersed meetings held by workers' unions (see Section 6.a.). Police generally take such actions when they believe that political discussions are occurring, or are likely to occur, at these meetings. On January 27, 70 police officers broke up a Swaziland National Association of Teachers (SNAT) union meeting. Police used video cameras to record proceedings (see Section 1.f.). On August 10, police banned an impromptu meeting called by the Swaziland Agricultural Plantation and Allied Workers Union (SAPAW) on the grounds that it coincided with the King's request to citizens that they attend a meeting where the CRC's findings for a new constitution would be presented. The Commissioner of Police specifically cited the Police and Public Order Act, which states that a meeting cannot be held if it would likely cause a breach of the peace.

In January nine other persons were charged with misconduct for compromising their political impartiality and for violating a government order that prohibited them from attending a November 2000 political meeting in South Africa. The meeting to discuss political issues was attended by approximately 800 Swazis. Participants included members of the SDA and various labor groups (see Sections 1.d., 2.d., and 6.a.).

Several traditional forums exist for the expression of opinion, including community meetings, national councils, and direct dialog with area chiefs. However, these local channels are not meant as a vehicle for political change; they often depend on the whims of leaders and are not consistently effective channels for expressing political dissent. In addition in 2000 there was a report that a chief threatened to evict families from ancestral land if they included members of a banned political party; however, no action was taken.

In October 2000, members of the Swaziland Federation of Trade Unions (SFTU) and SNAT marched to the Prime Minister's office to present a petition denouncing the eviction of two chiefs from their residences (see Section 1.f.). Also in October 2000, students from the University of Swaziland and William Pitcher Teachers' College, in addition to opposition leaders, marched to present a petition to the Government regarding the evictions but were denied entry by police in riot gear. After several hours, the protesters dispersed after the police threatened to remove them forcibly. At least 18 students reportedly were injured (see Sections 1.c. and 1.f.).

The law does not provide for freedom of association, and the Government restricts this right in practice. King Sobhuza's 1973 decree prohibits political parties. In January police arrested 15 labor union and political group members for organizing protest actions and for political association. On September 24, the Magistrate court acquitted six of these union members, but the cases of the remaining nine union representatives were pending at year's end (see Sections 1.d., 2.d., and 6.a.).

#### c. Freedom of Religion

There is no formal legal provision for freedom of religion; however, the Government generally respects freedom of religion in practice, although there are a few restrictions. Followers of all religious faiths are generally free to worship without government interference or restriction. Unlike in 2000 when police cancelled two prayer meetings on the grounds that they had political overtones, there were no reports of cancelled or dispersed prayer meetings during the year.

An April 13 order by the High Court reinstated six students, who were expelled for not obeying school rules and regulations because of their beliefs as Jehovah's Witnesses. The students initially were prohibited from attending school despite the court ruling; however, the students were allowed to return to school in May, and parents and school authorities were addressing the issue at year's end.

New religious groups or churches are expected to register with the Government upon organizing in the country. In order to be considered organized, a religious group or church must demonstrate either possession of substantial cash reserves or financial support from outside religious groups with established ties to western or eastern religions. For indigenous religious groups or churches, authorities consider demonstration of a proper building, a pastor or religious leader, and a congregation as sufficient to grant organized status. However, there is no law describing the organizational requirements of a religious group or church. While organized churches are exempt from paying taxes, they are not considered tax-deductible charities. All religions are recognized unofficially.

Government permission is required for the construction of new religious buildings. Non-Christian groups sometimes experience minor delays in obtaining permits from the Government.

#### d. Freedom of Movement Within the Country, Foreign Travel, Emigration, and Repatriation

The law does not provide for these rights, and the Government placed some limits on them in practice. Citizens may travel and work freely within the country; however, under traditional law, a married woman requires her husband's permission to apply for a passport, and an unmarried woman requires the permission of a close male relative. Citizenship law nominally enables nonethnic Swazis to obtain passports and citizenship documents; however, individuals seeking these documents sometimes experienced lengthy processing delays, in part due to occasional prejudice that mixed-race and white Swazis are not real Swazis (see Section 5). Political dissenters often have their citizenship questioned and can experience difficulty in obtaining travel documents. The CRC made a recommendation that effectively could render a child stateless should it be born to a Swazi mother and a foreign father (see Section 3).

In January police arrested 15 labor and political group members; six of the detainees were asked to surrender passports or travel documents and were forbidden to apply for travel documents until their cases have been resolved (see Sections 1.d., 2.b., and 6.a.). Six of the labor union members were acquitted, and the cases of the other nine members were pending at year's end (see Sections 1.d., 2.b., and 6.a.).

The Government treats several thousand ethnic Swazis living across the border in South Africa as virtually indistinguishable from local Swazis and routinely grants them travel and citizenship documents.

The law provides for the granting of asylum and refugee status in accordance with the 1951 U.N. Convention Relating to the Status of Refugees and its 1967 Protocol. The Government cooperates fully with the office of the U.N. High Commissioner for Refugees (UNHCR), as well as the various nongovernmental organizations (NGO's) involved in the care of refugees. According to the UNHCR, there are an estimated 1,000 refugees in

the country, the majority coming from the Great Lakes region of Africa and Angola. The issue of provision of first asylum did not arise during the year.

There were no reports of the forced return of persons to a country where they feared persecution.

### Section 3 Respect for Political Rights: The Right of Citizens to Change Their Government

Citizens are not able to change their government peacefully. The King retains ultimate executive and legislative authority, and political parties are prohibited. Passage of legislation by Parliament requires the King's assent to become law, which he is not obliged to give. When Parliament is not in session, the King may legislate by decree under his residual emergency powers. The King chooses the Prime Minister and, in consultation with the Prime Minister, also chooses the Cabinet, many senior civil servants, and the heads of government offices.

Citizens elect most members of the lower house of Parliament. According to law, 55 seats in the 65-seat House of Assembly are popularly contested. Parliamentary elections were held by secret ballot in October 1998 for 53 of the 55 elected seats (the King appoints the remaining 10 members), and a by-election was held in December 1998 for 1 of the 2 remaining constituencies. The final remaining constituency held its by-election in 1999.

The continuing ban on political parties and restrictions on political activity prompted some political groupings and trade unions to call for a boycott of the 1998 elections by their members. Members of the SFTU who participated in the electoral process were threatened with disciplinary measures by the labor federation. Election officials reported that approximately 200,000 of the 400,000 eligible citizens registered for the parliamentary elections, and that approximately 120,000 citizens voted, although critics questioned that figure.

There was no formal international observer presence during the 1998 elections, but there was intensive coverage by local and foreign media, and resident diplomats were granted accreditation to observe the proceedings freely. Candidates or their representatives also were allowed to monitor the elections. Election procedures generally were carried out in an orderly fashion. However, the decision to open polling stations for further voting a week after the election because of torrential rains led to irregularities, including persons being found with multiple copies of registration certificates. Alleged irregularities led to legal challenges in four constituencies, and the High Court overturned the result in one constituency as a result. Opposition political groupings remained highly critical of the entire electoral process, due to the continuing formal ban on organized political party activity.

As provided under law, the House of Assembly nominated 10 members from the public at large to serve in the upper house or Senate. The King appointed the additional 20 Senate members. The Cabinet of Ministers, sworn in on November 20, 1998, included only three elected Members of Parliament, with the balance drawn from appointed members of the House and Senate.

On September 22, elections were held by secret ballot without major difficulties to select new municipal councils in 11 cities and towns across the country. Voter turnout was low, with percentages ranging from 12 percent to 40 percent across all cities and towns. There were no reports of intimidation or violence.

Pressure has been building for several years to modernize the political system, and both the King and the Government recognize that there is a need for political reform, including the drafting of a new constitution and, specifically, a bill of rights. In 1996 the King appointed a 30-member commission with the stated purpose of examining the suspended 1968 Constitution, carrying out civic education, determining citizens' wishes regarding a future system of government, making appropriate recommendations on a new constitution, and drafting a new constitution. The CRC compiled a constitutional framework, including portions of the 1968 Constitution still in force, the 1973 decree as currently amended, and the 1992 Establishment of Parliament Order. The CRC distributed this framework nationwide as a starting point for discussion. On August 10, after 5 years of deliberation, the CRC publicly released its findings. In general the report concluded that most Swazis want a continuation of the status quo, a strengthening of the King's powers, a continued ban against political parties, greater emphasis on traditional law and custom, and stiffer penalties for those who speak against the state. In August the CRC was disbanded after submitting its report.

Domestic and international groups have criticized the CRC report as flawed. These groups specifically cited the commission's composition that consisted predominantly of traditionalists, the internal disputes that led to the resignation of four members, and the commission's controversial terms of reference. These controversial terms of reference included prohibition of media coverage, prohibition of group submissions, and possible fines and imprisonment of those persons interfering in the commission's activities. During the constitutional review



process, human rights organizations, church groups, labor unions, and other NGO's conducted their own active programs of constitutional and human rights civic education. For example, in May 2000, the National Democratic Institute, in conjunction with the country's Council of Churches, organized a 3-day constitutional conference that was well supported and well received by these groups as well as the Government.

Chiefs are custodians of Swazi law and custom and are responsible for the day-to-day running of their chiefdom. Although law and customs are not codified, chiefs essentially are responsible for maintaining law and order in their respective chiefdoms. For example, chiefs have their own community police who may arrest a suspect and bring the suspect before an inner council within the chiefdom for a trial. Besides the Swazi Administration Act of 1998, chiefs traditionally are empowered by virtue of unwritten customary laws to impose fines and some form of punishment to their subjects. Chiefs are an integral part of society and act as overseers or guardians of families within the communities and traditionally report directly to the king. Local custom mandates that chieftaincy is hereditary.

In October 2000, police evicted and relocated from their residences two chiefs representing the areas of KaMkwheli and Macetjeni, their family members, and others who opposed the imposed appointment of Prince Maguga in these areas (see Sections 1.c., 1.f., 2.a., and 2.b.).

The percentage of women in government or politics does not correspond to their percentage of the population; however, women generally have full legal rights to participate in the political process. There are 4 women in the 65-member House of Assembly, 4 women in the 30-seat Senate, and 2 women among the 16 ministers in the Cabinet. A woman serves as Secretary to the Cabinet and the head of the civil service. Three women serve as principal secretaries, the most senior civil service rank in the ministries. Three women served on the 30-person CRC (see Section 3). However, in accordance with societal practice, widows in mourning (for periods that can vary from 6 months to 3 years) are prevented from appearing in certain public places and from being near the King and, as a result, can be excluded from voting or running for office.

#### Section 4 Governmental Attitude Regarding International and Nongovernmental Investigation of Alleged Violations of Human Rights

A number of domestic human rights groups generally operate without government restriction, investigating and publishing their findings on human rights cases. Government officials are generally cooperative and responsive to their views. Human rights groups have spoken out on a number of occasions, criticizing the lack of accountability and transparency in government circles. In May Amnesty International visited the country to conduct investigative work on the state of human rights in the country. In the past, foreign diplomats and local representatives of international agencies were invited to tour correctional facilities; several visits occurred during the year (see Section 1.c.).

In previous years, the Government solicited and obtained expert assistance from the International Labor Organization (ILO) on national industrial relations legislation and international labor standards (see Section 6.a.).

#### Section 5 Discrimination Based on Race, Sex, Religion, Disability, Language, or Social Status

The law forbids employers to discriminate on the basis of race, religion, sex, or political affiliation. Under the law, employees may bring suit against employers for discrimination, and there also are provisions for criminal prosecutions. The law reportedly has been used on occasion to bring moral suasion to bear against employers. Legal and cultural discrimination against women remains a problem. Mixed race citizens sometimes experience governmental and societal discrimination.

#### Women

Domestic violence against women, particularly wife beating, is common, despite traditional strictures against this practice. Women have the right to charge their husbands with assault under both the Western and the traditional legal systems, and urban women frequently do so, usually in extreme cases when intervention by extended family members fails to end such violence. Rural women often have no relief if family intervention does not succeed, because the traditional courts can be unsympathetic to "unruly" or "disobedient" women and are less likely than the modern courts to convict men for wife beating. Rape also is common and regarded by many men as a minor offense, while women are inhibited from reporting such crimes by a sense of shame and helplessness, especially when incest is involved. Even in the modern courts, sentences frequently result in several months in jail, a fine, or both. The law provides some protection from sexual harassment, but its provisions are vague and largely ineffective. Several NGO's provide support for victims of abuse or discrimination.

Women occupy a subordinate role in society. In both civil and traditional marriages, wives are treated as minors legally, although those who marry under civil law may be accorded the legal status of adults, if stipulated in a signed prenuptial agreement. A woman generally requires her husband's permission to borrow money, open a bank account, obtain a passport, leave the country, gain access to land, and, in some cases, take a job. An unmarried woman requires a close male relative's permission to obtain a passport (see Section 2.d.). Despite the law's requirement for equal pay for equal work, men's average wage rates by skill category usually exceed those of women.

The dualistic nature of the legal system complicates the issue of women's rights. Since uncoded law and custom govern traditional marriage, women's rights often are unclear and change according to where and by whom they are interpreted. Couples often marry in both civil and traditional ceremonies, creating problems in determining which set of rules applies to the marriage and to subsequent questions of child custody and inheritance in the event of divorce or death. In traditional marriages, a man may take more than one wife. A man who marries a woman under civil law legally may not have more than one wife, although in practice this restriction sometimes is ignored. Traditional marriages consider children to belong to the father and to his family if the couple divorces. Children born out of wedlock are viewed as belonging to the mother. Under the law, a woman does not pass citizenship automatically to her children. Inheritances are passed through male children only.

Changing socioeconomic conditions, urbanization, and the increasing prominence of female leaders in government and civic organizations are breaking down barriers to equality. Women routinely execute contracts and enter into a variety of transactions in their own names. The Government has committed itself to various women's initiatives, and the Ministry of Home Affairs coordinates women's issues. In previous years, the Ministry organized seminars and workshops to address gender issues around the country. Although gender sensitization is not part of the formal school curriculum, some schools have organized debates and other mechanisms to address gender issues. The University Senate also has a subcommittee that encourages students and faculty to hold seminars and workshops on gender issues.

#### Children

The Government is concerned with the rights and welfare of children, and a number of laws directly address children's issues. The Government does not provide free, compulsory education for children. The Government pays teachers' salaries while student fees pay for books and the buildings' fund. Supplemental money sometimes must be raised for building upkeep, including teachers' housing. However, the country has a 99 percent primary school enrollment rate. A government task force educates the public on children's issues. The public school system ends at grade 12. Children are required to start attending school at the age of 6 years. Most students reach grade 7, which is the last year in primary school. A large percentage of students finish grade 10.

In general medical care for children is inadequate. Queues are long, nursing care in public hospitals is poor, and hospitals are overcrowded and understaffed. Most prescription drugs are available in urban facilities, but rural clinics have inadequate supplies of certain drugs.

Child abuse is a problem, and the Government has not made specific efforts to end such abuse. Children convicted of crimes sometimes are caned as punishment. There are a growing number of street children in Mbabane and Manzini. The law prohibits prostitution and child pornography and provides protection to children under 16 years of age from sexual exploitation and sets the age of sexual consent at 16 years of age (see Section 6.d.); however, female children sometimes suffer sexual abuse, including by family members. There were reports that Mozambican girls worked as prostitutes in the country.

Child labor occurs (see Section 6.d.).

#### Persons with Disabilities

The Ministry of Home Affairs has called for equal treatment of persons with disabilities; however, there are no laws that protect the rights of those with disabilities or that mandate accessibility for persons with disabilities to buildings, transportation, or government services. There has been no progress on legislation that would give preferential treatment to persons with disabilities for building access and other needs; however, all new government buildings under construction include improvements for those with disabilities, including accessibility ramps.

#### National/Racial/Ethnic Minorities

Governmental and societal discrimination is practiced widely against nonethnic Swazis, namely white persons and persons of mixed race. Although there are no official statistics, an estimated 2 percent of the population is nonethnic Swazis. Nonethnic Swazis have experienced difficulty in obtaining official documents, including passports (see Section 2.d.). Nonethnic Swazis also suffer from smaller forms of governmental and societal discrimination such as needing special permits or stamps to buy a car or house, delays in receiving building permits for houses, and difficulties in applying for a bank loan.

## Section 6 Worker Rights

### a. The Right of Association

The 2000 Industrial Relations Act (IRA) provides that employees who are not engaged in essential services have the right to participate in peaceful protest action to promote their socioeconomic interests. The 2000 IRA, with November amendments, is a comprehensive law providing for the collective negotiation of the terms and conditions for employment and dispute resolution mechanisms. In addition to these provisions, the law provides for the administration of a court devoted to the adjudication of labor related issues and establishes a tripartite labor advisory board.

In June 2000, the Government amended the 1998 IRA by modifying sections 40 and 52, which governed procedures for protest actions and outlined responsibilities of work councils. A subsequent review by the ILO's Committee of Experts (COE) criticized the amendments. Specifically, the ILO stated that the June amendments created burdensome and lengthy procedures for protest actions, restricted workers' rights to strike by making them liable for any civil damages that may not have been caused as a result of a strike, imposed restrictions on the independence of work councils, and did not provide adequate protection against worker dismissals for strikes. In November 2000, many of the controversial June amendments were modified; these November 2000 amendments subsequently received approval from the ILO's COE.

The main trade union federation is the Swaziland Federation of Trade Unions (SFTU). A second trade union federation is the Swaziland Federation of Labor (SFL), which broke away from the SFTU in 1993 and gained formal recognition from the Government in 1994.

Unions are free to draw up their own constitutions within the framework of the IRA. The IRA specifies a number of provisions that must be addressed in a constitution, including the election of officers by secret ballot. There is no collusion between the Government and business in relation to worker rights. The Labor Commissioner may reinstate unions quickly, once they have met all the legal requirements of the IRA.

The IRA details the steps to be followed when disputes arise, including the definition of a legal or illegal strike. The IRA shortened the notice that an organization or federation is required to give before it commences a protest action. This period of time was reduced from 3 weeks to 2 weeks. The IRA empowers the Government to mediate employment disputes and grievances through the Labor Advisory Board. When disputes arise, the Government often intervenes to try to reduce the chances of a strike, which may not be called legally until all avenues of negotiation have been exhausted, and a secret ballot of union members has been conducted. The IRA prohibits strikes in "essential" services, which include police and security forces, correctional services, fire fighting, health, and many civil service positions.

In recent years, there have been a number of strikes, usually over wages and benefits, or the dismissal of fellow workers. On May 20, the Industrial Court of Appeals ruled in favor of 32 state television employees who were dismissed in 1999 after striking for higher wages and better working conditions. In September 2000, the Minister of Public Service and Information had ordered the reinstatement of the employees; however, 6 days later, he withdrew the order, citing lack of jurisdiction over the matter.

During the year, the Government maintained that all outstanding labor issues already had been addressed. However, the SFTU continued to press for action on the 27 demands it presented in 1994, including calls for fundamental political change. These demands address a wide range of issues, including recognition of affirmative action, a national uniform minimum wage, an end to discrimination against women, the provision of better housing for workers, inclusion of worker representatives in constitutional discussions, and the lifting of the 1973 Decree that suspended the Constitution and outlawed political parties.

During a review of the 2000 IRA at its meeting in late 2000, prior to the November amendments, the COE noted that the new IRA satisfactorily addressed a number of issues, but stated that while the act constituted a "considerable improvement over previous legislation," discrepancies remained between the 2000 IRA and ILO conventions, particularly with respect to peaceful protest by unions and the right to strike. At the June meeting of the ILO Conference Committee on the Application of Conventions and Recommendations (CACR),

delegates proposed that a high-level ILO mission be sent to the country to meet with union leaders, employers, and government officials to examine whether workers are prevented from exercising their rights and civil liberties because of an alleged conflict between the provisions of the IRA and the 1973 Decree. No such mission occurred by year's end.

#### b. The Right to Organize and Bargain Collectively

The law provides for the right to organize and bargain collectively and outlaws antiunion discrimination. Collective bargaining is widespread; approximately 80 percent of the formal private sector are unionized. The law obliges employers to recognize a union when it achieves more than 50 percent membership among employees. Employers must allow representatives of legally recognized unions to conduct union activities on company time. The Industrial Court may refuse to register collective bargaining agreements in the event of nonobservance of any requirement of the IRA. The IRA permits workers councils, which are to be established in factories with 25 or more employees in the absence of a trade union, to negotiate terms and conditions of work, wages, and welfare.

Disputes are referred to the Labor Commissioner and the Industrial Court, if necessary. Although many employers resist union recognition and force the issue to the Industrial Court, the Court generally rules in favor of the unions in these cases. In the case of unfair dismissal, the court can order reinstatement and compensation for the employee, as well as fine the employer. Union leaders have made credible charges that management in various industries dismisses workers for union activity. The Government sometimes instigates such dismissals. The IRA provides for disputes to be referred to the Conciliation, Mediation, and Arbitration Committee (CMAC). The Deputy Labor Commissioner chairs the CMAC. By year's end, the CMAC had adjudicated approximately 740 cases.

There are no export processing zones.

#### c. Prohibition of Forced or Compulsory Labor

The law prohibits forced or compulsory labor, and the Government generally enforces this prohibition effectively; however, the SFTU cited the 1998 Administrative Order as a form of forced labor, because it reinforces the tradition of residents doing traditional tasks for chiefs and allows the chiefs to fine their subjects for failing to carry out the manual labor.

The law prohibits forced and bonded labor by children, and there were no reports that such practices occurred; however, there were reports that underage Mozambican girls worked as prostitutes in the country (see Section 6.d.).

#### d. Status of Child Labor Practices and Minimum Age for Employment

The law prohibits the hiring of a child below the age of 15 in an industrial undertaking, except in cases where only family members are employed in the firm, or in technical schools where children are working under the supervision of a teacher or other authorized person. Legislation limits the number of night hours that can be worked on schooldays, and limits children's

work-hours overall to 6 per day and 33 per week. Employment of children in the formal sector is not customary; however, children below the minimum age frequently are employed in the agricultural sector, particularly in the eastern cotton-growing region. Children also are employed as domestic workers, and as herd boys in rural areas. The Ministry of Labor is responsible for enforcement, but its effectiveness is limited by personnel shortages. The law prohibits prostitution and child pornography. The age of protection against sexual exploitation and the age of sexual consent are 16 years; however, there were reports that underage Mozambican girls worked as prostitutes in the country.

The law prohibits forced and bonded labor by children, and such practices are not known to occur (see Section 6.c.).

#### e. Acceptable Conditions of Work

There is a legally mandated sliding scale of minimum wages depending on the type of work performed. These minimum wages generally provide a worker and family with a decent standard of living. The minimum monthly wage for a domestic worker is approximately \$21 (180 emalangeni), for an unskilled worker \$33 (280 emalangeni), and for a skilled worker \$52 (450 emalangeni).

Labor, management, and government representatives have negotiated a maximum 48-hour workweek in the industrial sector except for security guards, who work up to six 12-hour shifts per week. The law permits all workers 1 day of rest per week. Most workers receive a minimum of 12 days annual leave. The Labor Commissioner enforces standards in the formal sector. There are extensive provisions allowing workers to seek redress for alleged wrongful dismissal; these provisions frequently are brought into play. There also are penalties for employers who conduct unauthorized lockouts.

The law protects worker health and safety. The Government sets safety standards for industrial operations, and it encourages private companies to develop accident prevention programs. Recent growth in industrial production has necessitated more government action on safety issues. However, the Labor Commissioner's office has conducted few safety inspections in recent years because of staffing deficiencies. Workers have no formal statutory rights to remove themselves from dangerous work places without jeopardizing their continued employment; nor do any collective bargaining agreements address the matter.

f. Trafficking in Persons

The law does not prohibit trafficking in persons; however, there were no reports that persons were trafficked to, from, or within the country.